IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 541 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge?

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AMRAT BRAHMANAND GUPTA - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
THROUGH JAIL for Appellant(s) : 1,
MR JM BUDDHBHATTI for Appellant(s) : 1,
MR RC KODEKAR, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 14/02/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)

1.This appeal under Sec.374 of the Code of

Criminal Procedure ('the Code' for short) has been filed by the appellant-original accused who has been convicted to suffer RI for life and fine of Rs.1,000/-, in default, to suffer RI for six months for the offence punishable under Sec.302 of IPC, RI for one year and fine of Rs.1,000/-, in default, to suffer RI for six months for the offence punishable under Sec.201 of IPC and for one month for the offence under Sec.135(1) of Bombay Police Act, vide judgment and order dated 17-4-1998 delivered by the learned Addl. Principal Judge, Court No.2, Ahmedabad, in Sessions Case No.250 of 1997.

2. The case of the prosecution in short is that on 9-11-1996 at about 2200 hours on the night of Diwali day, victim-Omprakash, who was staying in Hiralal-ni Chawl, Amraiwadi, Ahmedabad, was lighting crackers along with minor son in the entry of Hiralal Chawl when appellant accused was sitting across the road and taking salty biscuits and tea. At that time, appellant accused asked the victim as

to why he was lighting crackers and immediately thereafter, he took out dagger from his pants and gave blows with it to Omprakash as a result of that, Omprakash sustained injuries. To save himself, he went home, took saree from his wife and tied the same as bandage on the wounded portion for stopping blood from oozing out. He told his wife that accused Amrat inflicted blows on him with dagger. Thereafter, he became unconscious and on shouting, the relatives of the deceased and others came there. Immediately, he was taken to Shardaben hospital in an autorickshaw where he was admitted and his treatment started. During the course of treatment, he succumbed to the injuries and, therefore, wife of the victim lodged the complaint to that effect and it has been numbered as Amraiwadi Police Station I.C.R.No.524 of 1996 for the offences punishable under Secs.302 and 201 of IPC and police started investigation. Police prepared inquest panchnama and also made arrangements

to send dead body of the deceased for post mortem. He also tried to search the accused and on arrest of the accused, discovery panchnama has been prepared and at the instance of accused, dagger has been recovered. He also prepared panchnama of scene of offence in presence of panchas and also recorded statements and further statements of various witnesses. On receiving the post mortem report, same was kept in investigation file. He also sent certain muddamal with forwarding letter to FSL and kept the receipt in the investigation file and on receipt of FSL report, it was made part of investigation papers. At the end of investigation, charge sheet was submitted against the accused in the Court of learned Metropolitan Magistrate Court No.7, Ahmedabad.

3. As the offences alleged against the accused were exclusively triable by the Court of Sessions, the learned Metropolitan Magistrate committed the case to the Court of Sessions

at Ahmedabad City where it was numbered as Sessions Case No.250 of 1997 and transferred to the Court No.2 of learned Addl. Principal Judge for trial. Prior to that, charge was framed against the accused at Ex.1 and the accused pleaded not guilty to the charge and claimed to be tried.

4.To prove the case against the accused, the prosecution examined following witnesses:

1)P.W.1, Manjuben Omprakash Khatik, Ex.5, the complainant and wife of the victim. It is to be noted that she is not the witness of incident but it is before her, deceased has given her oral dying declaration.

2)P.W.2, Kaptansinh Bhavarsinh Yadav, Ex.7, the person having the pan galla in Hiralal chawl. As per the prosecution, he is the eye witness but not supported the case of the prosecution and has been declared as hostile.

3)P.W.3, Shivsinh Rupsinh Pal, Ex.8, the rickshaw driver, who took the victim along with others in Shardaben Hospital. He has not supported the case of the prosecution and has

been declared as hostile.

4) P.W.4, Ravindrasinh Kunvarsinh Thakur, Ex.9, the eye witness having a shop named Kiran Stores in front of chawl. He has also not supported the case of the prosecution and has been declared as hostile.

5) P.W.5, Navuji Ramaji Vihol, Ex.19, PSO, who recorded verdi.

6) P.W.6, Madukar Hanumant Nigam, Ex.22, panch of panchnama of scene of offence.

7) P.W.7, Somaji Becharji Thakor, Ex.24, panch of panchnama of discovery of dagger.

8) P.W.8, Dr.Digant Kalidas Dixit, Ex.25, the doctor who performed post mortem on the dead body of deceased.

9) P.W.9, Baliram Vishwanath Patel, Ex.28, the person having tea galla in Hiralal chawl.

10) P.W.10, Krishnapalsinh Maheshsinh Thakur, Ex.29, the person from whose house muddamal dagger has been discovered.

11) P.W.11, Manharsinh Popatsinh Vaghela, Ex.31, second panch of panchnama of scene of offence. He has not supported the say of

prosecution.

12) P.W.12, Baldevbhai Somabhai Thakore, Ex.32, second panch of discovery panchnama. He has also not supported the say of prosecution.

13) P.W.13, Karansinhbhai Arjanbhai Desai Ex.33, P.I., the Investigating Officer, who investigated the matter and submitted the charge sheet.

The prosecution also placed reliance upon following documentary evidence such as Complaint Ex.6; copy of vardhi Ex.20; inquest panchnama Ex.10; panchnama of cloth recovered from the body of the victim Ex.11; forwarding letter Ex.13; FSL report Ex.14; office copy of forwarding letter Ex.15; FSL receipt Ex.16; opinion of FSL expert Exs.17 and 18; post mortem note Ex.26;death certificate Ex.27; panchnama of scene of offence Ex.34 and discovery panchnama Ex.35.

5. After completion of oral evidence of witnesses and on submission of closing purshis by learned APP, learned Additional

Principal Judge, Ahmedabad City, recorded further statement of the accused under Sec.313 of Cr.P.C. Thereafter, after hearing the learned counsel appearing for the respective parties, learned Addl. Principal Judge delivered the aforesaid judgment and order of conviction and sentence which is giving rise to prefer the present appeal.

6. Heard learned counsel, Mr.J.M.Budhabhatti for the appellant-original accused and learned APP, Mr.R.C.Kodekar for the State.

7. It is mainly argued by Mr.Buddhabhatti that the appellant is innocent and has been falsely involved though there is no evidence to connect him with the crime in question. He has taken us through oral as well as documentary evidence and argued that all the three eye witnesses have not supported the say of the prosecution and even though they have been declared as hostile, then also, there is no evidence to connect him with the crime in question. He has taken us through the evidence of the complainant, who is the

wife of the victim and other relevant evidence of doctor, who treated him and performed post mortem on the deceased and argued that prosecution has failed to prove that it is the accused who used the weapon in the commission of offence. The prosecution has failed to prove the discovery also as both the panchas of discovery panchnama have not supported the say of the prosecution. According to him, even panchas of panchnama of scene of offence have also not supported the case of the prosecution. In these circumstances, the evidence to connect the accused with the crime in question are the evidence of complainant though not an eye witness, medical evidence of doctor and also evidence of Police Officer. As there are no evidence by way of which prosecution can prove the presence of the accused at the relevant time and gave blow to the victim, the appellant is required to be acquitted.

8. Learned APP, Mr.Kodekar, has also taken us through the relevant evidence of P.W.1-

Manjuben Omprakash Khatik, Ex.5, the complainant and wife of the victim; P.W.5, Navuji Ramaji Vihol, Ex.19, PSO; P.W.10, Krishnapalsinh Maheshsinh Thakur, Ex.29; P.W.8, Dr.Digant Kalidas Dixit, Ex.25, the doctor who performed post mortem of the deceased and Police Inspector, Karansinhbhai Arjanbhai Desai, the Investigating Officer as well as through panchnama of scene of offence, inquest panchnama, post mortem note and discovery panchnama. It is argued by him that it is true that panchas of discovery panchnama as well as panch of panchnama of scene of offence have not supported the say of the prosecution but same have been proved by the prosecution by way of evidence of Police Officers. According to him, the evidence of these Police Officers, who are the independent persons and who came in picture as part of their duty, is required to be believed as they are not interested witnesses. Through the evidence of Dr.Digant Kalidas Dixit, Ex.25 and post mortem note

Ex.26, the prosecution has proved all the four injuries received by the victim. Muddamal article (dagger) has been recovered at the instance of accused and panchnama is also proved through the evidence of Police Officer and the said muddamal when sent to FSL was opined to have been found the human blood. Not only that, the place from where the said muddamal has been recovered at the instance of accused is approachable only by him and it was discovered after 12 days of the incident i.e. on 21-11-1996 when the accused was arrested. Taking us through relevant discussion of the judgment of the court below in para 27, it is argued that presence of the accused at the relevant time has not been denied by any of the witnesses. He has drawn our attention towards the evidence of above referred hostile witnesses before they became hostile and argued that the judgment delivered by the court below is well reasoned which does not require any interference.

9. We have gone through the evidence on record which have been shown to us by the learned counsel for the respective parties. We have also gone through the judgment delivered by the court below more particularly towards para 27. Court below has discussed the evidence and gave convincing reasons for arriving at the conclusion.

10. On going through the evidence of complainant, who is the wife of the victim, it appears that she is not the witness of incident. It is however true that incident has taken place in the entry of the chawl. It is also true that after receiving injury, victim went to his house and immediately demanded saree from his wife and it was tied at the injury portion and he informed the incident in toto to his wife by stating that Amrut has given dagger (Chapu) blow to him. In the cross examination, nothing contrary came out shaking her evidence on material point. Court below has believed her version as the oral dying declaration of the victim

given before his wife and we also have the same belief. This more particularly so in view of the fact that the incident has been taken place very near to their house and hence, it is quite natural that the injured will definitely go to his house and narrate the same to his nearest relative and same has been happened in this case also. Not only that but at the earliest opportunity, her complaint Ex.6 has been recorded by PSI in view of vardhi Ex.20 received by him from concerned PSO wherein also, she has given the same details at the earliest wherein name of the accused along with his act has been described. Inquest panchnama Ex.10 also supports the say of the prosecution which shows that four injuries were received by the victim by way of dagger blow. Same is corroborated by the post mortem note Ex.26 more particularly column No.17 wherein four injuries have been mentioned by the doctor. Similar is the version given by the doctor in his oral evidence at Ex.25 and doctor has

also given cause of death as shock due to stab injuries sustained. It is true that in the cross examination, the said doctor has stated that he has not seen those four injuries while giving treatment to the victim. However, it is to be noted that he himself is the doctor who performed the post mortem of the deceased and gave opinion that all the four injuries were found and narrated by him in the post mortem. He also deposed the same in Court also. It is true that at the time of examination, he might not have noticed those injuries. There is nothing on record to show that he is the only doctor who treated him. No treatment papers are appearing on record either and hence, it might be possible that other doctors also might have treated the victim on being brought to the hospital. In absence of any treatment papers appearing on record, only one line admission in cross examination in the last line will not turtle the case of the prosecution more particularly when there are

evidence on record of the complainant-wife, inquest panchnama Ex.10, post mortem Ex.26, death certificate and evidence of doctor Ex.25 clearly proving the case of the prosecution. Even doctor has opined that injuries sustained by the victim tally with the weapons used in the commission of offence. Moreover, discovery panchnama has been proved by the prosecution through the evidence of Police Officer. As we have stated earlier, if evidence of Police Officer is otherwise trustworthy, then his evidence cannot be discarded merely on the ground of some interested persons not being supporting the case of the prosecution though they boldly attempt their signatures on the panchnama and panch slip. Even PSI has deposed and proved the same and nothing contrary has come out from his evidence. Moreover, weapon has been discovered at the instance of accused and that too also in the house of his friend and it is such a place where except the concerned persons, others

would not have the knowledge. In these circumstances, we believe that discovery panchnama is just and proper and has been properly proved. Not only that, vide FSL reports Exs.17 and 18, it was opined by the FSL expert that blood stains found on the dagger are of human blood. Apart from that, the weapon discovered at the instance of accused has been found to have human blood and in the opinion of the doctor, it tallies with the injuries received by the victim. In view of the above, there are no reasons to disbelieve that it is the case wherein dagger blows have been given by the accused to the victim and same has been tallied with the above referred independent evidence. Not only that, it gets support from the complainant by way of dying declaration and there is no reason to disbelieve the same also.

11.In view of the above, we are of the opinion that case of the appellant-accused has been proved by the prosecution beyond reasonable doubt and therefore, we do not find it

necessary to interfere with the judgment and order delivered by the court below and hence, this appeal is required to be dismissed.

12.The appeal is hereby dismissed.

(R.P.DHOLAKIA,J.) (M.D.SHAH,J.)

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